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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/677,401

09/29/2000

K. Jon Kern

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33486 7590 05/18/2009

HEIMBECHER & ASSOC., LLC

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EXAMINER

NGUYEN, TAN D

ART UNIT

PAPER NUMBER

3689

MAIL DATE

DELIVERY MODE

05/18/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* JON K. KERN, JOSEPH BIRD and BROOKE HARTMAN

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Application No. 09/677,401  
Technology Center 3600

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Mailed: May 15, 2009

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Before QUITA S. GOULD *Supervisory Paralegal Specialist, Review Team*  
GOULD, *Supervisory Paralegal Specialist, Review Team.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on May 5, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S CONSIDERATION OF REPLY BRIEF

A Reply Brief was filed on February 9, 2009, in response to the Examiner's Answer mailed December 9, 2008.

Title 37, Code of Federal Regulations, §41.43 states:

(a)(1)... the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

The Communication mailed April 28, 2009, was an improper acknowledgment of the Reply Brief, as it constitutes a Supplemental Examiner's Answer as per MPEP§ 1208, part II. A Supplemental Examiner's Answers requires a Director or designees approval.

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) vacate the Communication mailed April 28, 2009;
- 2) generate and mail either:
  - a) a revised Communication properly acknowledging to the Reply Brief dated February 9, 2009 in accordance with MPEP§ 1208, part II.; OR
  - b) issue a Supplemental Examiner's Answer with the required signature (Technology Center Director or designee), if appropriate; and
- 3) for such further action as may be appropriate.

Application No. 09/677,401

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

QG/kmm

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